

1 KEVIN A. DARBY, NVSB# 7670
2 TRICIA M. DARBY, NVSB# 7959
3 DARBY LAW PRACTICE, LTD.
4 4777 Caughlin Parkway
5 Reno, Nevada 89519
6 Telephone: 775.322.1237
7 Facsimile: 775.996.7290
8 kad@darbylawpractice.com
9 tricia@darbylawpractice.com
10 Attorneys for Debtor/Debtor in Possession

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re: CASE NO.: BK-N-20-50471-BTB
Chapter 11 Subchapter V
ALY EATERY, INC,
Debtors.
**MOTION TO ASSUME LEASE OF
NONRESIDENTIAL REAL
PROPERTY: 5015 S. MCCARRAN
BLVD, RENO, NV 89502**

Hearing Date: *See Notice of Hearing*
Hearing Time:

Debtor and Debtor in Possession, ALY EATERY, INC. ("Debtor"), hereby moves this court for an order approving the assumption of Debtor's lease for 5105 S. MCCARRAN BLVD, RENO, 89502 (the "Business Premises") from PACIFIC CASTLE MANAGEMENT and/or SUBWAY REAL ESTATE, LLC (collectively the "Landlord"). This motion is made pursuant to Section 365(a) of the Bankruptcy Code and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure, is supported by the Declaration of Alicia Youngberg and is based on the following points and authorities

POINTS AND AUTHORITIES

I. Backgrounds Facts

1. On May 5, 2020, Debtor filed a voluntary petition for relief under Chapter 11 Subchapter V of the United States Bankruptcy Code thereby commencing this Chapter 11 Case.
2. Debtor is operating its business as a debtor-in-possession. The Debtor owns and operates a Subway Sandwiches franchised restaurant at the Business Premises.

3. Debtor leases the Business Premises from Landlord pursuant to the terms of a written lease agreement dated August 29, 1990, between Landlord's predecessor in interest as lessor, and Subway Real Estate, LLC as lessee, a copy of which is attached to the Youngberg Declaration as Exhibit 1 (the "Lease"). Attached as Exhibit 2 to the Youngberg Declaration is the Seventh Amendment to the Lease, which extended the term of the Lease through January 31, 2022. Monthly rent plus monthly common area maintenance fees currently average approximately \$3,550 per month.

4. As of the date of this motion, Debtor is current on all financial obligations under the Lease. Debtor will continue to timely remit payments required under the Lease as they become due.

II. Legal Argument

5. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. §365(a). "The purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to 'renounce title to and abandon burdensome property'." In re Orion Pictures Corp., 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 Collier on Bankruptcy §365.01[1] (15th Ed. 1993)). The standard applied to determine whether the rejection of an unexpired lease should be authorized is the "business judgment" standard. LRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984).

6. Pursuant to 11 U.S.C. §365(d)(1)(A) "an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

7. The Debtor, in its business judgment, has determined that the Lease is essential to Debtor's business operations and successful reorganization. Debtor's income is produced from the

1 Business Premises and that property cannot be substituted or replaced. The Business Premises has
2 been recently improved and remodeled to meet the requirements of the Subway parent corporation
3 and requires no immediate repairs or maintenance. The assumption of the Business Premises Lease
4 is in the best interests of the Debtor, its bankruptcy estate and its creditors

5 **III. Conclusion**

6 8. In light of the foregoing, the Debtors respectfully request the Court to approve the
7 assumption of the Lease for the Business Premises under section 365(a) of the Bankruptcy Code.

8 DATED this 5th day of May, 2020.

9 DARBY LAW PRACTICE, LTD.

10 */s/ Kevin A. Darby*

11

KEVIN A. DARBY, ESQ.
12 Attorneys for Aly Eatery, Inc.